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6 Attorneys for Plaintiff,
7 SHANNON ALYNN RAMSAY

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 SHANNON ALYNN RAMSAY,

12 Plaintiff,

13 v.

14 THE STATE BAR OF CALIFORNIA, and
15 DOES 1 - 100 inclusive.

16 Defendants.
17

CASE NO.: C-07-3645 JW

**DECLARATION OF JOHN A.
SHEPARDSON, ESQ. IN SUPPORT
OF PARTIAL SUMMARY JUDGMENT**

Date: March 10, 2008
Time: 9:00 A.M.
Dept.: Courtroom 8, 4th Floor
Judge: Honorable James Ware

18 I, John A. Shepardson, Esq., declare:

- 19 1. I have personal knowledge of the following facts and circumstances, and would
20 and could competently testify thereto, if called as a witness.
- 21 2. I am the attorney of record for Plaintiff Shannon Ramsey.
- 22 3. Attached hereto and marked as Exhibit 1 is a true and correct copy of the The
23 California State Bar's "General Statistics Report" for the July 2005 Examination.
- 24 4. The Report is posted on the The Bar's Website.
- 25 5. The Report at page 2 shows the passage rates for 5 different Racial/Ethnic
26 groups—"White", "Black", "Hispanic", "Asian" and "Other Minority".
27
28

1 6. The passage rates for "Disabled" applicants is not shown, and counsel for The
2 Bar has admitted the Bar does not compile data for disabled students—thus disabled
3 applicants are not included in the "Other Minority" grouping.

4
5 7. Attached hereto and marked as Exhibit 2 is a true and correct copy of pages 1-2
6 of "Achieving "Diversity" information from The California State Bar. Promotion of
7 diversity in the legal profession is reported to be a high priority.

8 8. Attached hereto and marked as Exhibit 3 is a true and correct copy of an
9 "AGENDA ITEM" for October 22, 2007 posted on The Bar's Website.

10
11 9. On page 2, The Bar states that applicants are asked to voluntarily provide
12 information regarding the race/ethnicity and gender.

13 10. The Bar states "...The Committee of Bar Examiners is gathering this data to
14 assist in the continuing evaluation of the examination."

15 11. The performance of the disabled is not being considered in evaluating
16 examination.


17
18 12. On page 7 The Bar indicates the National Conference of Bar Examiners is
19 beginning to collect race/ethnicity and gender information.

20 13. Shannon is legally and completely blind.

21 14. She has attempted to pass the California Bar Examination on four occasions,
22 and has not succeeded.

23
24 I declare under penalty of U.S. law that the foregoing is true and correct.

25
26 DATE: January 1, 2008

27
28 
JOHN A. SHEPARDSON, Attorney for
Plaintiff SHANNON ALYNN RAMSAY

**GENERAL STATISTICS REPORT
JULY 2005 CALIFORNIA BAR EXAMINATION¹
OVERALL STATISTICS**

Applicant Group	First-Timers				Repeaters				All Takers		
	Took	Pass	%Pass		Took	Pass	%Pass		Took	Pass	%Pass
General Bar Examination	5909	3763	63.7		2434	309	12.7		8343	4072	48.8
Attorneys' Examination	196	67	34.2		129	25	19.4		325	92	28.3
Total	6105	3830	62.7		2563	334	13.0		8668	4164	48.0

GENERAL BAR EXAMINATION STATISTICS

Law School Type	First-Timers				Repeaters				All Takers		
	Took	Pass	%Pass		Took	Pass	%Pass		Took	Pass	%Pass
CA ABA Approved	3725	2616	70.2		936	166	17.7		4661	2782	59.7
Out-of-State ABA	1383	897	64.9		391	48	12.3		1774	945	53.3
CA Accredited	290	75	25.9		526	34	6.5		816	109	13.4
CA Unaccredited	39	3	7.7		164	8	4.9		203	11	5.4
Correspondence	78	17	21.8		91	6	6.6		169	23	13.6
Law Office/Judges' Chambers	0	0	0.0		2	1	50.0		2	1	50.0
US Attorneys Taking the General Bar Exam ²	253	139	54.9		124	34	27.4		377	173	45.9
Foreign Attorneys Taking the General Bar Exam ³	129	15	11.6		171	10	5.8		300	25	8.3
4-Year Qualification ⁴	12	1	8.3		22	1	4.5		34	2	5.9
Others ⁵	0	0	0.0		7	1	14.3		7	1	14.3
Total	5909	3763	63.7		2434	309	12.7		8343	4072	48.8

¹ These statistics were compiled using data available as of the date results from the examination were released.

² Attorneys admitted in other jurisdictions less than four years must take and those admitted four or more years may elect to take the General Bar Examination.

³ Attorneys admitted in foreign jurisdictions must take the General Bar Examination.

⁴ Applicants may qualify to take the General Bar Examination through a combination of four years of law study without graduating from a law school.

⁵ Applicants in this category qualified to take the examination but do not meet the requirements for allocation to any of the other categories.

**JULY 2005 CALIFORNIA BAR EXAMINATION
NUMBER OF TAKERS AND PERCENT PASSING BY RACIAL/ETHNIC GROUP
GENERAL BAR EXAMINATION FIRST-TIME TAKERS ONLY***

School Type	White		Black		Hispanic		Asian		Other Minority	
	Took	% Pass	Took	% Pass	Took	% Pass	Took	% Pass	Took	% Pass
CA ABA Approved	2365	75.0	102	46.1	301	57.5	524	67.0	218	63.3
Out-of-State ABA	839	72.0	64	29.7	84	54.8	216	59.7	80	51.3
CA Accredited	187	27.8	19	5.3	45	20.0	11	36.4	15	40.0
CA Unaccredited	20	15.0	1	0.0	12	0.0	2	0.0	3	0.0
Correspondence	56	23.2	4	0.0	7	14.3	5	40.0	4	25.0
Other	237	48.5	8	0.0	28	14.3	60	31.7	40	15.0
Total*	3704	69.1	198	33.8	477	48.8	818	61.7	360	53.3

NUMBER OF TAKERS AND PERCENT PASSING BY RACIAL/ETHNIC GROUP: REPEATERS*

School Type	White		Black		Hispanic		Asian		Other Minority	
	Took	% Pass	Took	% Pass	Took	% Pass	Took	% Pass	Took	% Pass
CA ABA Approved	483	17.6	82	12.2	130	17.7	153	19.6	68	20.6
Out-of-State ABA	163	12.3	55	1.8	52	17.3	59	18.6	46	10.9
CA Accredited	273	8.4	82	2.4	65	6.2	49	4.1	43	4.7
CA Unaccredited	80	2.5	33	6.1	25	4.0	12	8.3	12	8.3
Correspondence	58	5.2	4	25.0	10	10.0	13	0.0	6	16.7
Other	117	23.1	45	6.7	30	10.0	57	15.8	69	7.2
Total*	1174	13.6	301	6.3	312	13.1	343	15.5	244	11.5

*Totals are for those reporting racial/ethnic group.

**JULY 2005 CALIFORNIA BAR EXAMINATION
NUMBER OF FIRST-TIMERS AND REPEATERS PASSING BY GENDER***

School Type	First-Timers				Repeaters			
	Males		Females		Males		Females	
	Took	% Pass	Took	% Pass	Took	% Pass	Took	% Pass
CA ABA Approved	1827	70.9	1897	69.6	460	14.6	476	20.8
Out-of-State ABA	725	64.3	656	65.7	221	12.2	170	12.4
CA Accredited	141	22.7	148	29.1	288	7.3	236	5.5
Unaccredited	21	9.5	18	5.6	93	6.5	69	2.9
Correspondence	48	25.0	29	17.2	60	6.7	31	6.5
Other	192	37.5	200	41.0	180	13.3	144	16.0
Total*	2954	63.6	2948	63.9	1302	11.4	1126	14.2

* Totals are for those reporting gender.

12/21/05

**JULY 2005 CALIFORNIA BAR EXAMINATION
GENERAL BAR EXAMINATION STATISTICS
CALIFORNIA ABA APPROVED LAW SCHOOLS**

LAW SCHOOL	FIRST-TIMERS			REPEATERS		
	TOOK	PASS	%PASS	TOOK	PASS	%PASS
California Western School of Law	175	101	58	54	10	19
Chapman University School of Law	111	66	59	24	2	8
Golden Gate University School of Law	137	60	44	77	11	14
Hastings College of The Law	362	305	84	37	11	30
Loyola Law School-Los Angeles	335	251	75	90	24	27
McGeorge School of Law	263	168	64	62	17	27
Pepperdine University School of Law	157	114	73	29	5	17
Santa Clara University School of Law	251	163	65	60	20	33
Southwestern University School of Law	244	162	66	64	13	20
Stanford Law School	83	73	88	5	2	40
Thomas Jefferson School of Law	112	43	38	81	6	7
University of California - Berkeley	231	201	87	13	6	46
University of California - Davis	160	118	74	19	4	21
University of California - Los Angeles	265	235	89	20	3	15
University of San Diego School of Law	234	187	80	34	3	9
University of San Francisco School of Law	176	131	74	33	8	24
University of Southern California The Law School	186	152	82	13	2	15
Western State University College of Law	69	17	25	109	7	6
Whittier Law School	174	69	40	112	12	11
Total	3725	2616	70	936	166	18

**JULY 2005 CALIFORNIA BAR EXAMINATION
GENERAL BAR EXAMINATION STATISTICS
CALIFORNIA ACCREDITED, NOT ABA APPROVED LAW SCHOOLS**

LAW SCHOOL	FIRST-TIMERS			REPEATERS		
	TOOK	PASS	%PASS	TOOK	PASS	%PASS
Cal Northern School of Law	15	3	20	7	0	0
Empire College School of Law	16	6	38	12	0	0
Glendale University College of Law	15	4	27	9	1	11
Humphreys College School of Law	11	3	27	8	1	13
John F. Kennedy University School of Law	11	5	45	54	1	2
Lincoln Law School of Sacramento	28	7	25	31	5	16
Lincoln Law School of San Jose	18	2	11	33	2	6
Monterey College of Law	15	2	13	15	1	7
New College of California School of Law	25	6	24	45	2	4
San Fernando Valley College of Law	3	1	33	27	3	11
San Francisco Law School	12	1	8	26	0	0
San Joaquin College of Law	36	14	39	28	5	18
Santa Barbara College of Law	9	4	44	15	0	0
Southern California Institute of Law -- Santa Barbara	3	0	0	6	0	0
Southern California Institute of Law -- Ventura	2	0	0	17	1	6
Trinity Law School	12	2	17	52	4	8
University of La Verne College of Law	25	8	32	18	0	0
University of West Los Angeles School of Law	28	6	21	92	6	7
Ventura College of Law	6	1	17	23	2	9
Schools No Longer in Operation	0	0	0	8	0	0
Total	290	75	26	526	34	6

**JULY 2005 CALIFORNIA BAR EXAMINATION
GENERAL BAR EXAMINATION STATISTICS
CALIFORNIA UNACCREDITED LAW SCHOOLS**

LAW SCHOOL	FIRST-TIMERS			REPEATERS		
	TOOK	PASS	%PASS	TOOK	PASS	%PASS
American College of Law	0	0	0	43	0	0
California Southern Law School	10	1	10	31	2	6
Desert College of Law	1	0	0	0	0	0
Irvine University College of Law	0	0	0	3	0	0
Larry H. Layton School of Law	1	0	0	3	0	0
Pacific Coast University School of Law	9	1	11	15	2	13
Pacific West College of Law	5	1	20	9	0	0
Peoples College of Law	0	0	0	12	0	0
Ridgecrest School of Law	4	0	0	3	1	33
University of Northern California Lorenzo Patino School of Law	6	0	0	23	1	4
Western Sierra Law School	3	0	0	12	1	8
Schools No Longer Registered	0	0	0	10	1	10
Total	39	3	8	164	8	5

**JULY 2005 CALIFORNIA BAR EXAMINATION
GENERAL BAR EXAMINATION STATISTICS
CALIFORNIA CORRESPONDENCE LAW SCHOOLS**

LAW SCHOOL	FIRST-TIMERS			REPEATERS		
	TOOK	PASS	%PASS	TOOK	PASS	%PASS
Abraham Lincoln University	11	2	18	20	1	5
Concord Law School	44	10	23	16	2	13
Newport University School of Law	0	0	0	6	0	0
Northwestern California University School of Law	5	1	20	7	0	0
Oak Brook College of Law & Government Policy	11	3	27	6	0	0
Southern California University For Professional Studies College of Law	2	0	0	5	0	0
University of Honolulu School of Law	0	0	0	1	0	0
West Haven University	1	0	0	0	0	0
William Howard Taft University	2	0	0	20	0	0
Schools No Longer Registered	2	1	50	10	3	30
Total	78	17	22	91	6	7

**JULY 2005 CALIFORNIA BAR EXAMINATION
GENERAL BAR EXAMINATION STATISTICS
OUT-OF-STATE ABA SCHOOLS WITH 10 OR MORE TAKERS**

Law School	Took	Pass	%Pass	Took	Pass	%Pass
American University	42	23	55	4	0	0
Arizona State University	2	0	0	10	1	10
Benjamin N. Cardozo School of Law	8	3	38	10	2	20
Boston College	20	15	75	3	1	33
Boston University	30	23	77	6	0	0
Brigham Young University	16	15	94	4	0	0
Brooklyn Law School	8	4	50	3	1	33
Case Western Reserve University	11	2	18	5	0	0
Catholic University of America	7	4	57	4	0	0
Columbia University	55	47	85	2	0	0
Cornell University	22	17	77	2	0	0
DePaul University	5	0	0	6	1	17
Duke University	28	24	86	1	1	100
Franklin Pierce Law Center	7	6	86	3	0	0
George Washington University	41	34	83	6	0	0
Georgetown University	77	59	77	11	4	36
Gonzaga University	20	6	30	8	1	13
Harvard Univ. Law School	87	73	84	3	0	0
Howard University	6	2	33	6	1	17
Indiana University – Bloomington	16	10	63	4	0	0
Lewis and Clark College	17	7	41	10	5	50
New England School of Law	19	6	32	9	1	11
New York Law School	5	0	0	5	0	0
New York University	55	46	84	4	2	50
Northeastern University	14	7	50	2	1	50

**JULY 2005 CALIFORNIA BAR EXAMINATION
GENERAL BAR EXAMINATION STATISTICS
OUT-OF-STATE ABA SCHOOLS WITH 10 OR MORE TAKERS (Continued)**

Law School	Took	Pass	%Pass	Took	Pass	%Pass
Northwestern University	34	22	65	4	2	50
Rutgers-The State University-Camden	11	2	18	6	0	0
Seattle University	6	3	50	6	1	17
Suffolk University	9	3	33	5	0	0
Syracuse University	14	5	36	17	2	12
Temple University	11	5	45	3	1	33
Thomas M. Cooley Law School	9	1	11	16	0	0
Tulane University	38	29	76	8	2	25
University of Arizona	19	17	89	3	0	0
University of Chicago	29	24	83	1	1	100
University of Denver	15	3	20	6	0	0
University of Houston	8	6	75	2	0	0
University of Illinois	19	12	63	1	0	0
University of Iowa	16	5	31	4	0	0
University of Michigan	31	27	87	2	0	0
University of Minnesota	13	11	85	3	2	67
University of Notre Dame	24	16	67	1	0	0
University of Oregon	15	9	60	5	0	0
University of Pennsylvania	30	25	83	0	0	0
University of Texas	17	11	65	2	1	50
University of Utah	6	3	50	4	0	0
University of Virginia	32	27	84	1	0	0
University of Washington	9	7	78	2	0	0
Vermont Law School	8	0	0	4	0	0
Villanova University	9	5	56	2	1	50

**JULY 2005 CALIFORNIA BAR EXAMINATION
GENERAL BAR EXAMINATION STATISTICS
OUT-OF-STATE ABA SCHOOLS WITH 10 OR MORE TAKERS (Continued)**

Law School	Took	Pass	%Pass	Took	Pass	%Pass
Washington University	15	11	73	8	1	13
Willamette University	11	7	64	4	1	25
Yale University	40	38	95	0	0	0
All Other Out-Of-State Schools	267	130	49	140	11	8
TOTAL	1383	897	65	391	48	12

Achieving DIVERSITY

LEGAL PROFESSION

DIVERSITY & THE STATE BAR

A View From The Top

BY JAMES O. HEITING
PRESIDENT



Leadership is the foundation of history. Our leaders take us to places and events that are recorded and are the subject of stories and debates for time to come. It is so important when we learn of leaders and the great things they have done that we can relate to them and see ourselves as leaders someday. Growing up, I loved Mickey Mantle, Abraham Lincoln and Mohammed Ali. I was fascinated by the power and prestige of lawyers and judges, senators and legislators.

Whoever our heroes are, we relate to them on many levels and use them to learn and to dream. We step into their shoes in our imaginations, and we fight the fights they fought, and we fight new fights that are our own.

In talking to other governors of the State Bar during the year before my election to the presidency, I learned of the importance and enthusiasm some had for a "pipeline project", to encourage diverse students to a career in the law, and diverse members of the Bar to leadership positions. The more I learned, the more I got excited and after the election, I immediately appointed a Pipeline Task Force to put in place THE model program(s) to do just that. Many groups have had pipeline projects of sorts, but I wanted to put together the best of the best for our Bar. It should be in place by the end of my year and we expect to introduce it, with the great effort of our Task Force volunteers, with Ruthe Ashley as Chair, at the Spring Summit.

When somebody is teaching me, or providing information to me, or moving me onto the "right path", respect and knowledge that they understand what I am about and who they are talking to is of *primary* importance. I must feel that they *understand*. Usually, the more exposure I have to those that are different, the more they become the same...or maybe the more I become the same. In either event, we begin to understand each other. We become blind to our differences and relate to our similarities.

In our society, in our country, we pride ourselves on the diversity of our citizenship. We are made up of all races, creeds, ages, appearances, backgrounds, religions, beliefs. How can we expect our children to live and thrive in this, our world we are forming for them, without diversity in the heroes of their dreams. I want my children to start with the realization that we are all human beings, all struggling for health, love, happiness. I want my children to have heroes of every color and type; and the only way I can have that for my children is if our leadership is as diverse as our citizens. I am happy to report that the State Bar puts diversity at the top of the list of our short and long term goals in its strategic planning.

I look forward to seeing you at the Spring Summit June 2-3, 2006 in San Jose.

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The State Bar of California | Office of Legal Services
of California | Access to Justice Program

STATE LEGAL

EXHIBIT

2

PIPELINE TASK FORCE: IN THE BUSINESS OF REPAIRING LEAKS



BY RUTHE ASHLEY

The United States Supreme Court stated in *Grutter v. Bollinger*, 539 U.S. 306, 332-33 (2003) that "access to legal education (and thus the legal profession) must be inclusive of talented and qualified individuals of every race and ethnicity, so that all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America."

In California, people of color constitute fifty-three percent (53%) of the population. In contrast, only seventeen (17%) of our over 200,000 attorneys are attorneys of color. The pipeline for people of color into the legal profession is slowing to a mere trickle and leaks are occurring at all levels. From pre-school through law school, and then through retention and advancement into legal practice, under-represented attorneys are being lost. This leakage has created a crisis across the nation in a legal profession that understands the importance of diversity, and the American Bar Association has recognized this problem and is moving to find solutions.

California, as one of the most diverse states in the nation, has also recognized the crisis: Past President, John Van De Kamp, talked about the importance of opening the pipeline and current President Jim Heiting, created the Pipeline Task Force in October 2005. President Heiting asked me to chair the task force, with a goal of finding what the State Bar could do to ameliorate the crisis.

Our Task Force's goal is to review the universe of diversity programs already in place across the nation. Following the review of national programs, Task Force members will recommend programs for inclusion in the Pipeline Model Practices list. Program evaluation is based on several factors including continuity, impact, sustainability and replicability. The goal is to create an on-line list of model practices that can be easily accessed and replicated by bar associations, law firms, corporations, law schools, the public sector or the courts. Partnerships and collaborations on all parts of the pipeline will be a key component to the success of these model pipeline diversity programs.

The Task Force is divided into four working groups: The education pipeline (Pre-School to grade 20); bar associations and law firms; courts and government sector; and corporate counsel. Task force members include bar association presidents and executive directors, law firm partners, professors, deans, teachers, judges, corporate counsel, chief counsels, and public sector attorneys. The unique aspect of this Task Force is that it addresses the entire pipeline from pre-school to retention and advancement in practice. This is the first time the entire pipeline is working together in a collaborative partnership.

The Task Force is currently reviewing existing programs. Our third meeting will be at the Spring Summit June 2nd and 3rd in San Jose, where the Task Force can get feedback from the attendees of the summit on the proposed Model Practices, as well as input on key issues and initiatives to be addressed by the task force. At this summit, the Courts committee will host a first-ever Judicial Summit for California judges to address the need for increased diversity on the bench. The Task Force is steadily moving towards the unveiling of the first phase of the project at the Annual Meeting October 5th through 8th in Monterey.

California, under President Heiting's leadership, is leading the way in acting on the issues and problems that face our legal profession. As the *Grutter* court wrote, "access... must be inclusive" and the leadership of America must look like the population of America.

ABA SEEKING CO-SPONSORS FOR DIVERSITY PIPELINE RESOLUTION

The ABA Presidential Advisory Council on Diversity in the Profession has submitted a recommendation "to address significant problems facing minorities with the pipeline to the profession." Several state, local and minority bar associations have signed on to the recommendation and the Council has requested that others sign on as well.

The recommendation urges bar associations to work to ensure that the bar exams of each state do not have a disparate impact on minority passage rates, to work with the LSAC and law schools to ensure that admissions policies do not have a disparate impact on minority acceptance rates, and to work with elementary and secondary schools to support programs that will increase the readiness of minority applicants for college.

To see the resolution go to <http://www.abanet.org/op/councilondiversity/resolution.pdf>

AGENDA ITEM

November 126

Release of Bar
Examination Applicant
Data

DATE: October 22, 2007

TO: Members, Board of Governors
Members, Board Committee on Regulation, Admissions and Discipline Oversight

FROM: The Committee of Bar Examiners
Gayle Murphy, Senior Executive, Admissions

SUBJECT: Release of Bar Examination Applicant Data

EXECUTIVE SUMMARY

The Committee of Bar Examiners (Committee) recently denied a request from Professor Richard Sander and his research team (collectively "Professor Sander") for certain data regarding bar examination applicants. Professor Sander had requested the Committee furnish to him information regarding applicants' race, gender, bar examination performance, LSAT scores, law school grade point averages and undergraduate grades. Some of the data was collected by the Committee in the past but is no longer part of an applicant's record. Most of the data was collected with the understanding that it would be kept confidential and used by the Committee in its research and publication of general statistics, and otherwise only shared with law schools or other bar admission authorities. Professor Sander wanted to use the information to support his "mismatch theory," which suggests that affirmative action programs in some law schools affect certain minority law students negatively.

In the interest of ensuring that the bar examination remains fair, valid and reliable, the Committee has over the years authorized its testing consultants to conduct studies that use the data provided by applicants as well as other information gathered from sources such as the law schools and the Law School Admissions Council. The Committee has never released applicant data to third parties in the absence of customized individual signed releases from the affected applicants.

Because of the publicity generated by the op ed pieces authored by Professor Sander, in which the Committee's decision to deny the request for the release of confidential information has been criticized, it has been determined that Board review of the Committee's decision would be appropriate.

Members, Board of Governors
Members, Board Committee on Regulation, Admissions and Discipline Oversight
October 22, 2007
Page 2

SUBJECT/ISSUE

Review of the Committee of Bar Examiners' decision denying Professor Richard Sander's request to release confidential bar examination applicant data.

BACKGROUND

During the online registration application process, admissions applicants are asked to voluntarily provide personal information regarding their race/ethnicity and gender. They are advised, "The following information is to be furnished by each applicant as part of the application process. The Committee of Bar Examiners is gathering this data to assist in the continuing evaluation of the examination. This information will be treated in a confidential manner and will be used only for research purposes. It will not be retained by the Committee as part of your application." There is no penalty for not providing the information, and some applicants elect not to do so.

The Committee of Bar Examiners (Committee) began to collect this information approximately 30 years ago in response to concerns that were raised by minority groups (particularly African Americans and Hispanics) that minority candidates were not passing the bar examination at the same rate as non-Hispanic Caucasians or Asians, and if that was true, they wanted to know the source of the difference. Specifically, their concern was whether the bar examination was biased against these groups, or was something else occurring?

At that time, however, no bar applicant data was available to determine whether there was a difference in passing rates among different minority groups, let alone the magnitude or source if there was. This led the Board of Governors (not the Committee) to commission Stephen P. Klein (the Committee's psychometric consultant) to conduct a study that involved gathering racial/ethnic and gender data along with LSAT scores and law school grade point averages (GPAs). This study found that (1) there were large differences in passing rates among these groups and (2) these differences corresponded very closely to differences between groups in their law school GPAs. No bias in the bar examination itself was detected. After this study was published, minority groups requested that the Committee collect gender and race/ethnic data on a routine basis, which the Committee agreed to do. General statistics from the bar examination, which contain detailed information relative to minority and gender pass rates and individual California law school pass rates have been maintained since 1977.

Over the years, the Committee has commissioned several related studies, which were conducted by Dr. Klein, all of which focused on the examination itself, such as whether the generally low pass rates for minority applicants is due to a possible bias in the examination's questions, time limits, or other features. This is in keeping with the Committee's mission to ensure the "quality" of the bar examination as indicated by its

Members, Board of Governors
Members, Board Committee on Regulation, Admissions and Discipline Oversight
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validity, reliability, fairness, and cost effectiveness. Attached as Appendix A is an index of studies that have been authorized by the Committee, which have been prepared by Dr. Klein. The Committee has never authorized a study that would have used bar examination applicant data solely to investigate the effects of specific law school programs, such as schools' affirmative action policies. The Committee does provide various examination sub-scores of the applicants (as a group) to the California law schools that they are allocated to for each administration of the examination, which allows law schools to monitor the effects of instruction (such as whether their students are having more difficulty with certain subjects) and to compare the performance of their graduates to other law schools in the same categories. Attached as Appendix B is a sample of the report that is currently provided to the law schools, individually, which shows how their students perform on the bar examination compared to the overall numbers and other law schools in their categories.

The fact that any individual is an applicant for admission to practice law in California is considered a privacy issue; all information provided by the applicant is treated confidentially until the individual passes the bar examination. Even then, the Committee releases only the names of those who pass the examination. The only exceptions occur when the Committee confirms an applicant's legal education qualifications and through the moral character investigation process when questionnaires are sent to employers, references and other licensing boards. The applicant is required to sign releases as part of both the bar examination and the moral character determination application process.

The bar examination application release specifically authorizes the Committee to "... release information regarding my application to take the bar examination and my bar examination scores and pass/fail status to the law school to which I have been or will be allocated for purposes of qualifying to take the California Bar Examination." The only other authorized release of related information is to other bar admission authorities.

Request Submitted by Professor Sander

In response to his request for a meeting, in May 2006, Richard Sander, Ph.D., a professor at the University of California Los Angeles School of Law, met with staff from the Office of Admissions. During that meeting, he inquired as to whether he might be able to access the bar examination applicant data maintained by the State Bar's Office of Admissions to continue with his study of affirmative action programs in law schools and their possible negative effect on minority law students. He was advised that he was welcome to submit a request to the Committee for its consideration, although generally the Committee did not release confidential information to third parties.

Following that meeting, a request dated September 5, 2006 from Professor Richard Sander, UCLA, Dr. Stephen Klein, GANSK & Associates, Professor William Henderson of Indiana University and Professor E. Douglass Williams of Sewanee University,

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entitled "Proposal for analyses of state bar data" (Appendix C), was received. Professor Sander and Dr. Klein appeared at the September 2006 Committee meeting and made a presentation on the proposal. The Committee deferred making a decision on the request to enable it to study the proposal further, and to discuss it with the Law School Council, which is composed of ten law school deans elected by their colleagues by category of school, three Committee members and the Chair of the Board Committee on Regulation, Admissions and Discipline Oversight. Also, Committee members expressed their desire to seek advice of counsel.

During its October 2006 meeting, the proposal was discussed by the Law School Council. Several deans voiced their concerns about the proposal. In particular, they believed that: 1) if the data were released to Professor Sander's group, it should be available to anyone else who might ask for it for the purpose of doing their own study(ies); 2) there were questions regarding the independence of the research team, as it might have its own motives related to proving certain theories; and, 3) the confidentiality of bar applicant data should be preserved. Professor Sander was advised of the concerns that were raised during the meeting, and he responded with a supplemental memorandum dated November 19, 2006 (Appendix D). In addition, a telephone conference call was set up, at Professor Sander's request, between the Committee's Subcommittee on Examinations Chair, Alan Yochelson, Gayle Murphy, Dean Barbieri, Examinations Director, and Professor Sander to discuss the proposal further.

Consideration of the proposal, which included the supplemental information that had been gathered, was scheduled for the Committee's December 2006 meeting, but at Professor Sander's request, further review was deferred to the February 2007 Committee meeting. Several letters, some in support and others not, were received regarding the proposal, which included letters from five members of the U.S. Commission on Civil Rights, from John Steele (on his own behalf), from Judy Sakaki, Vice President, Student Affairs, University of California, transmitting a memorandum by special assistant Bill Kidder, and from Eileen Kaufman and Tayyab Mahmud, Co-Presidents of the Society of American Law Teachers (Appendix E). A response was sent to the members of the Commission on Civil Rights advising them of the status of the request (Appendix F).

The Committee had the proposal on its agenda for discussion and possible action during its February 2007 meeting. Included in the agenda item was a new memorandum from Professor Sander's group dated January 26, 2007 (Appendix G). During that meeting, the Committee also considered advice from counsel during the closed portion of the agenda. The Committee decided again to defer making a decision on the request so that it could further study the matter. Before making a decision on the request, there was a consensus that the Committee would benefit from more information regarding research studies that it had authorized in the past, and possible

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research studies that it might conduct in the future related to ensuring the fairness and validity of the examination process.

During its May 2007 planning meeting, a briefing was received from the Committee's psychometric consultant, Stephen Klein, Ph.D., on the research that had been conducted in the past on the California Bar Examination, and presentations from him and another independent measurement consultant, Edward Haertel, Ph.D., on what future studies the Committee might consider were also received. Professor Sander was invited to attend the meeting in the belief he might find it interesting; however, consideration of his specific request and proposed study during the May meeting was not contemplated nor cited as an item on the agenda.

Having studied the matter in great detail, it was anticipated that a final decision regarding the proposal submitted by Professor Sander's group would be made at the next Committee meeting, which was scheduled for June 29 and 30, 2007. Professor Sander contacted staff and asked that another meeting be scheduled with him (and others) to discuss how the "...study might be handled as an internal bar contractual study." In a June 15, 2007 email, Professor Sander wrote to Gayle Murphy, "I realize you had wanted to make a report to the committee at the end of the month, and this timeline squeezes that....but certainly from our perspective, we'd rather have a chance to talk through the specific issues and explore different formulations for the study, than get an early answer, so a slower timeline would be fine with us." Because of scheduling conflicts, an additional meeting with Professor Sander and others he had wanted to have there could not be held before the June Committee meeting.

There was a general consensus between Committee members and staff that a final decision needed to be made on the original proposal. Professor Sander was advised that the Committee would be taking action on the proposal during its June 29 and 30, 2007 meeting. A decision regarding this particular proposal did not preclude further discussions of possible alternative studies and the methods by which they could be conducted. No additional presentations from the proposal's authors were contemplated nor planned. Professor Sander voiced concern that the Committee would be making its final decision in his absence, and arrangements were made so that he could address the full Committee on the matter during its meeting on the morning of June 30, 2007. He attended the meeting, made his presentation, and after substantial and substantive discussion, the Committee voted to deny his request for use of the bar examination applicant data.

A formal letter was sent to Professor Sander and Professor Henderson advising them of the Committee's decision and outlining some of the reasons the request was denied (Appendix H). The Committee's primary reason for denying the request was that applicant information is collected with the understanding that it is confidential and will only be used by the Committee for purposes related to the bar examination and the

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publication of general examination statistics. The Committee generally does not release applicant data to third parties in the absence of customized individual signed releases. Professor Sander wrote a letter to the Committee in response (Appendix I) to its decision. In that letter, which was very critical of the Committee's process for consideration of the request and the decision that was made, was a statement to the effect that the Commission on Civil Rights would be asking the Committee to reconsider its decision. On August 24, 2007, the *Wall Street Journal* published a commentary from Gail Heriot objecting to the decision of the Committee. Since then several op ed pieces authored by Professor Sander and his colleagues have appeared in various newspapers, in particular the *Daily Journal* and *The Los Angeles Times*, in which the State Bar has been criticized for not granting Professor Sander's request. Additional articles and letters to the editor concerning the matter appeared in *The Recorder*. And, just recently, an article critical of Dr. Sander and in support of the Committee's decision appeared in *The National Law Journal*. Nothing has been received to date from Professor Sander or his colleagues specifically seeking reconsideration of the Committee's decision.

General Comments

Providing bar examination applicant data for use in the proposed "mismatch" study would be a significant departure from past research practices. The closest the Committee came to doing something similar was in the late 80's when a type of mismatch study was authorized: "Are Bar Exam Scores Affected by Law School Admissions Practices." The findings of that study were: "... Black and Latino passing rates on the bar exam probably would not be improved by encouraging minority group applicants to attend law schools with students whose LSAT scores are more similar to their own scores. And, in all racial groups, high ability applicants (as measured by LSAT) have about the same high probability of passing the bar exam. ..." It should be noted that it appears that one of the major limitations of Professor Sander's proposed research is that unlike the study that Dr. Klein did almost 20 years ago, law school GPA data is no longer available as part of the data collected by the Committee. This is important because law school GPA typically is usually a far greater predictor of success on the bar examination than is the LSAT. Twenty years ago the Committee routinely gathered law school GPAs, which was complicated by having to convert all the different systems for reporting grades (4-pt, 100-pt, letter grades, etc.) to a common scale of measurement. The practice of recording law school GPAs was discontinued many years ago for several reasons, such as changes in computer systems and personnel, availability of resources, cost, etc.

Another problem with the request is that the Committee does not have undergraduate grade point averages (UGPA) data available as part of the data it currently collects, which is necessary for some of the analyses Professor Sander hopes to complete. If the decision is modified and available data is released to Professor Sander, only LSAT

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scores would be available as part of determining the qualifications at the point of entry into law school, even though more selective law schools also give significant weight to UGPA.

Professor Sander is asking also for some data that the Committee is not authorized to share with third parties, such as data related to applicants' LSAT scores. Most likely, written consent from the Law School Admissions Council would need to be obtained before LSAT data could be released to Professor Sander.

Comments have been made to the effect that the Committee has cooperated with an outside entity in the past by providing bar applicant data to the Law School Admission Council (LSAC) for its bar passage study. This is true, however, it should be noted that this was not without special permission to do so. A letter was sent to Chief Justice Malcolm Lucas from the then State Bar General Counsel, Diane Yu, requesting the Court's assistance and instruction on how to comply with the request of the LSAC for confidential bar application information (this was for the examinations administered during the period July 1988 through February 1991). After an agreement between the LSAC and the State Bar was signed, the LSAC provided the Committee with the list of names of applicants, all of whom had signed a release permitting the release of this information to the LSAC, and data, which included specific details relative to their bar examination performance, was then compiled and provided to the LSAC.

After surveying bar administrators in several other United States jurisdictions, it does not appear that Professor Sander, nor any of his colleagues, have approached any other bar admission agencies for release of similar data. While most states do not collect racial/ethnic and gender data in the first place, only one administrator indicated that release of any bar examination applicant data to an independent research group, such as Professor Sander's, might be approved by the Bar Examiners. The National Conference of Bar Examiners has begun to collect ethnic/race and gender data from applicants applying to take the Multistate Professional Responsibility Examination and with that data intends to conduct its own studies.

Future Considerations

Denying Professor Sander's request does not preclude the Committee from considering future studies of its own or in partnership with others. The Committee has as an ongoing goal, in fact, one that is included in its strategic plan, to consider and authorize future studies to ensure that the examinations it administers (the First-Year Law Students' Examination and the California Bar Examination) remain fair, valid and reliable tests. Following a decision as to what additional studies should be completed, the appropriate data to be collected needs to be identified, funds to pay for the studies need to be allocated, whether working with other entities is appropriate should be contemplated, and modifications to the current release forms signed by the applicants

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may need to be considered. The Committee believes that these future discussions should be done in partnership with the law schools – keeping in mind the different roles they have. If a law school's graduates are not performing well on the bar examination there is a legitimate need for the law school to determine why, and the sharing of certain data collected by the Committee may be helpful in making those assessments.

FISCAL AND PERSONNEL IMPACT

None

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT

None

RULE AMENDMENTS

None

PROPOSED BOARD COMMITTEE/BOARD RESOLUTIONS

Following a presentation by the Chair of the Committee of Bar Examiners, and comments received during the meeting, if the Board Committee on Regulation, Admissions and Discipline Oversight believes that the Committee of Bar Examiners' decision denying the request from Professor Richard Sander for the release and use of California Bar Examination applicant data should be confirmed or modified, a resolution will be drafted for consideration by the Board Committee and the Board of Governors during their meetings on November 8 and 9, 2007.